

Memorandum of Understanding
among
City of Newport, Oregon (“City”),
Newport Urban Renewal Agency (“Agency”)
and
Landwaves, Inc. (“Landwaves”)

Recitals

- A. The City and Agency have established an overall infrastructure plan for the South Beach area, as depicted in Newport Transportation System Plan, adopted in November 2012 with Ordinance No. 2045 (the “Plan”). All Parties desire to work collaboratively to implement the Plan in a coordinated and equitable fashion. Except where the context otherwise indicates, when used herein the term “Parties” means City, Agency, and Landwaves.
- B. As Landwaves contemplates future development of its industrial zoned South Beach property, and potential certification of said property through the State of Oregon “shovel ready” industrial lands program, it finds that it is desirous to establish some certainty as to the location where SE 50th Street is to be realigned and SE 62nd Street extended, and to place the “as travelled” portion of SE 50th Street, which is currently contained within an easement, into a formal public street right-of-way.
- C. Similarly, the City and Agency are interested in placing the “as travelled” portion of SE 50th Street into a public street right-of-way and in securing rights-of-way to facilitate the future realignment of SE 50th Street and the future extension of SE 62nd Street in accordance with the Plan because it facilitates the establishment of needed industrial development sites and furthers the City’s plans to create an alternative north-south route to US 101 that will serve the broader public.
- D. The Parties recognize that care will need to be taken in establishing the location of a realigned SE 50th Street and SE 62nd Street given the sensitive wetlands that exist in the area, and agree that every effort should be made to establish right-of-way alignments that will minimize impacts to these resources once the roads are constructed.
- E. Agency has identified and appropriated funding for acquisition of rights-of-way for the realignment of SE 50th Street and the extension of SE 62nd Street in fiscal year 2016/2017.
- F. An airport lighting array exists at the south end of Landwaves industrial property, in the vicinity of where right-of-way for the extension of SE 62nd Street would tie into the “as travelled” segment of SE 62nd Street. The Parties agree that the array should remain in its existing location with SE 62nd Street being extended underneath the array in the future. City is prepared to acquire, and Landwaves is willing to grant, an easement over that portion of the array that encroaches onto its property on terms to be agreed upon by City and Landwaves.

- G. This memorandum is limited to those portions of SE 50th Street, including its future realignment, and SE 62nd Street that are on Landwaves property. The Parties understand that rights-of-way from other property owners will be needed to complete the realignment of SE 50th Street and may be needed to construct the SE 62nd Street extension.
- H. Landwaves acknowledges that the execution of this memorandum does not constitute a commitment by Agency or City to obtain additional rights-of-way for the realignment of SE 50th Street or the extension of SE 62nd Street or to construct said streets or that such streets will be constructed within a specific timeframe. The Parties share the goal of determining the appropriate timing for the construction of the street improvements and an equitable distribution of those costs amongst the benefitted owners.

Terms

1. SE 50th Street Property Dedication (Existing Alignment)

- a. City shall prepare a draft right-of-way dedication document for the “as travelled” portion of SE 50th Street to establish an 80-foot wide public road right-of-way where the City currently possesses a utility and access easement to its Water Treatment Plant as described in Book 358 at Page 1086, and modified with Instrument No. 200307325, of the Lincoln County Records.
- b. City will provide Landwaves a copy of the draft right-of-way dedication document for its review and comment. Landwaves and City will collaborate on any revisions needed to the document.
- c. Once the Parties are in agreement with the language contained in the right-of-way dedication document, the dedication instrument will be executed by Landwaves and accepted by the City. City will pay for the recording costs.
- d. City agrees to release its rights to easements now encumbering the land that is to be dedicated as part of the right-of-way dedication document or by separate recorded instrument following its acceptance of the dedication.
- e. The Parties agree that there should be no monetary compensation associated with this right-of-way conveyance.

2. SE 50th Street (Future Alignment) and SE 62nd Street Dedication

- a. Agency will retain a surveyor to prepare a conceptual drawing of an 80-foot wide road right-of-way for the east-west realignment of SE 50th Street and for the extension of SE 62nd Street envisioned in the Plan (ref: Exhibit A). Landwaves will provide City (without warranty as to accuracy) with any survey records or wetland delineation reports in its possession that would inform the preparation of the concept drawing. Agency will provide a copy of the conceptual drawing to Landwaves for its review.
- b. Landwaves shall review the conceptual drawing and provide Agency feedback regarding any changes it would like to see made to the document. Agency and City are amenable to

Landwaves naming the north / south segment of the new street right-of-way extending south to SE 62nd Street in accordance with the City's established street naming conventions. The east / west oriented portion of the new right-of-way, where it ties into the as-travelled portion SE 62nd Street, will be known as SE 62nd Street.

- c. Agency and Landwaves will collaborate to determine the best location for the new SE 50th Street and SE 62nd Street alignments. Once the Parties are in agreement with the conceptual alignments, Agency will have the rights-of-way appraised by an MAI designated appraiser, licensed in the State of Oregon. A copy of the appraisal report will be provided to Landwaves for its review, and any comments provided by Landwaves will be shared with the appraiser who may, at their sole discretion, elect to modify the appraisal.
- d. Landwaves agrees to dedicate rights-of-way for the realignment of SE 50th Street and extension of SE 62nd Street to the City for its fair market value. If Landwaves disagrees with the fair market value established by Agency's appraiser then it shall, at its expense, retain an MAI designated appraiser, licensed in the State of Oregon, to perform a separate appraisal with the sales price being the average of the two appraisals.
- e. Once a sales price is established, Agency shall finalize the right-of-way survey and prepare the dedication documents. A copy of the final documents shall be provided to Landwaves for its review and comment. Once Landwaves completes its review and its comments have been addressed, the proposed right-of-way dedications shall be presented to the Agency Board and Newport City Council for approval.
- f. Closing and settlement shall occur after approval by Landwaves and the Newport City Council at a Title Company designated by Landwaves, and Landwaves shall be responsible for its pro-rated share of the *ad valorem* taxes due as of the date of the closing. City will be responsible for causing the dedicated area to become exempt from real property taxation.
- g. Agency shall be responsible for all costs attributed to the acquisition of the rights-of-way, unless otherwise specified above.

3. Easement for Industrial Park sign along US 101

- a. City is willing to grant Landwaves an easement over its property at the intersection of SE 50th Street and US 101 so that Landwaves may construct a freestanding pole or monument sign for its industrial properties.
- b. Agency will prepare a draft easement document that it will provide to Landwaves for comment. The location, size, and value of the easement will be determined as part of the process described in Section 2 of this memorandum.
- c. Parties acknowledge that the City property, which is a fee owned strip of land over which SE 50th Street was constructed, is located outside of the city limits and that Landwaves construction of a sign will be subject to approval by Lincoln County.

4. Airport Navigational Array Easement

- a. City will prepare a draft airport navigational array easement and conceptual drawing of the easement area for that portion of the airport approach lighting system situated on Landwaves property and will provide Landwaves a copy of the draft easement documents for its review and comment. The area to be encumbered by the easement is subject to Landwaves' prior approval.
- b. Landwaves and City will collaborate on any revisions needed to the easement documents. It is City's desire that the easement be exclusive and perpetual in nature, but is open to language that would provide for the release of the easement at such time as the lighting array is no longer needed. City further desires that it be given access over Landwaves property to maintain the approach lighting system. If desired by Landwaves, City is open to a provision being included in the easement to allow the lighting array to be relocated, at Landwaves expense, subject to Federal Aviation Administration approval.
- c. Once the Parties are in agreement with the language contained in the easement document, the City will have the easement appraised by an MAI designated appraiser, licensed in the State of Oregon. A copy of the appraisal report will be provided to Landwaves for its review, and any comments provided by Landwaves will be shared with the appraiser who may, at their sole discretion, elect to modify the appraisal.
- d. Landwaves agrees to dedicate the airport navigational array easement to the City for its fair market value in accordance with terms and using a form acceptable to Landwaves. If Landwaves disagrees with the fair market value established by Agency's appraiser then it shall, at its expense, retain an MAI designated appraiser, licensed in the State of Oregon, to perform a separate appraisal with the sales price being the average of the two appraisals.
- e. Once a sales price is established, City shall finalize the easement and provide a copy of the final documents to Landwaves for its review and comment. Once Landwaves completes its review and its comments have been addressed, the easement shall be presented to the Newport Airport Advisory Committee and Newport City Council for approval.
- f. Upon execution of the navigational array easement, City will record in the real property records of Lincoln County a document that will terminate the Navigational Aid (I.L.S. Centerline) Easement dated April 14, 1993, which was recorded in Book 279 at Page 2359 and re-recorded in Book 280 at Page 0234, as amended.
- g. Closing and settlement shall occur after approval by Landwaves and by the Newport City Council at a Title Company designated by Landwaves.
- h. City shall be responsible for all costs attributed to the acquisition of the easement, unless otherwise specified above.

5. Other Easements or Rights-of-Way

- a. The Parties understand that the rights-of-way being dedicated pursuant to this memorandum may not be sufficient to contain the full extent of development required to

construct the streets given existing terrain and wetland constraints. Should this occur, the parties agree to work collaboratively to modify the right-of-way or put in place temporary or permanent easements over areas proposed for street or related development at such time as the extent of the construction is known. Such changes to the location of the right-of-way or the dedication of easements would be negotiated separate from this memorandum.

- b. Landwaves and City will work together in good faith to create a public access easement over City owned property east of its wastewater treatment facility to provide alternative access to Landwaves industrial properties. Landwaves agrees to take the lead in developing a conceptual alignment for such an easement and its specific location, size and value would be negotiated separate from this memorandum. Landwaves will pay for and provide the surveying work and legal description for the easement area.

6. Schedule

- a. The Parties will work in good faith to complete their respective responsibilities under this Memorandum of Understanding (MOU) so that the rights-of-way and easements are in place by June 30, 2017.

7. Slope

- a. Landwaves and City acknowledge that the hillside above the right-of-way on the western boundary of the waste water treatment plant may be at risk of landslides and will work collaboratively to stabilize the area to prevent earth movement should a slide hazard be determined to exist.

8. Non-Binding MOU

- a. It is the intent of the Parties to work together in good faith to implement the terms of this MOU such that the rights-of-way and easements can be established in an efficient and equitable manner. However, this memorandum is non-binding on the Parties and represents only the intent of the Parties with respect to the subjects herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum on the dates show hereunder.

[Signatures follow on next page.]

City of Newport by

Signature: _____

Sandra Roumagoux

Printed Name/Title:

Sandra Roumagoux, Mayor

169 SW Coast Hwy

Newport, Oregon 97365

Date: September 6, 2016

Newport Urban Renewal Agency by

Signature: _____

David Allen

Printed Name/Title:

David Allen, Chair

169 SW Coast Hwy

Newport, Oregon 97365

Date: September 6, 2016

Landwaves, Inc. by

Signature: _____

B. Serkin

Printed Name/Title:

Bonnie Serkin, Chief Operating Officer

~~P.O. Box 12085~~ 2712 SE 20th Ave

Portland, Oregon ~~97212~~ 97202

Date: September 6, 2016